

Koch, Kristine

From: Koch, Kristine
Sent: Thursday, January 29, 2015 11:10 AM
To: MCCLINCY Matt; Bensel Lore
Cc: GAINER Tom; Cora, Lori
Subject: RE: ARARs related to Removal-Fill Program for PDX Harbor
Attachments: Revised DSL ARARs Table 2 2-03_ARARs 121614.xlsx; Response to DSL ARARs 121614.docx

Lore,

EPA has reviewed the information provided by the State and we are providing our responses. If you would like to discuss this further, please let us know. We plan to share a draft of Section 2 with the PRP group on Feb 6, so if you would like to discuss before then please let us know.

Thanks,

Kristine Koch
Remedial Project Manager
USEPA, Office of Environmental Cleanup

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From: MCCLINCY Matt [<mailto:MCCLINCY.Matt@deq.state.or.us>]
Sent: Thursday, September 04, 2014 4:57 PM
To: Koch, Kristine
Cc: GAINER Tom
Subject: FW: ARARs related to Removal-Fill Program for PDX Harbor

Hi Kristine,

I am sure that this was routed to you, but just in case I am forwarding it.

Matt

From: Bensel Lore [<mailto:lore.bensel@state.or.us>]
Sent: Monday, August 04, 2014 1:41 PM
To: 'yamamoto.deb@epa.gov'
Cc: LLOYD Diane; BENSEL Lore; GAINER Tom
Subject: ARARs related to Removal-Fill Program for PDX Harbor

Hello Deb,

I was asked to review the Removal-Fill Program and consider whether any provisions of the program should be ARARs for the Portland Harbor Superfund Site.

EPA has already identified three provisions related to Compensatory Wetland or Tidal Waters Mitigation as potential ARARs. CWM applies to wetlands and tidal waters so it will apply to both removal and fill activities in wetlands along the river. Those provisions are OAR 141-085-0685 (Functions and Values), 141-085-0690(4) (CWM Ratios), and 141-085-0710 (Monitoring). See the spreadsheets attached to your email to Kevin Parrett dated July 7, 2014 at 1:29 pm. The authorizing statute and the supporting rules should be added to the list of ARARs, including ORS 196.825(5), OAR 141-085-0510, OAR 141-085-0680, all of OAR 141-085-0690 (not just (4)), OAR 141-085-0695 through 141-085-0705, and OAR 141-085-0715.

OAR 141-085-0765 establishes standards, requirements, criteria, or limitations for Compensatory Non-Wetland/Non-Tidal Waters Mitigation. This rule applies to both removal and fill activities within the Lower Willamette River. Like the rules for CWM, this rule is authorized by ORS 196.825(5). The statute and rule should be added to the list of ARARs.

It is DSL's understanding that there may be one or more mitigation banking opportunities associated with the clean-up. Therefore, the rules related to banking should be added to the list of ARARs. Those provisions are OAR 141-085-0720 through 141-085-0740. In addition, the rule related to in-lieu fee mitigation should be included. It is OAR 141-085-0745.

The river portions of the Portland Harbor Superfund Site are within the planning area of the Lower Willamette River Management Plan (LWRMP). The LWRMP is a rule that is codified at OAR 141-080-0105. It was adopted to set policy for the Removal-Fill Program and the state's proprietary interests. It may be downloaded from <http://www.oregon.gov/dsl/DO/docs/lwrmp92.zip>. The LWRMP establishes standards, requirements, criteria, or limitations for removal or fill activities within the Lower Willamette River. For example, the LWRMP sets forth general conditions that must be included in all removal or fill permits that authorize activities in the Lower Willamette River. See pages F-15 to 19. OAR 141-080-0105 should be added to the list of ARARs.

Perhaps the most important provisions of the Removal Fill Program are the statute that requires a permit and the statute that states the specific decision criteria. ORS 196.810 requires a permit for any amount of removal or fill in waters of this state when the water is an Essential Indigenous Salmonid Habitat such as the Lower Willamette River. ORS 196.825(1)(a) and (b) set the primary standards for when the Department of State Lands will issue a removal or fill permit in any waters of this state, including in the Lower Willamette River. These statutes should be added to the list of ARARs.

Lore Bense
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(503) 947-4583

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